



SOUTH HOOK
LNG TERMINAL COMPANY LTD

BY LETTER & E-MAIL

Third Package Consultation Team
Department of Energy and Climate Change (DECC)
Area 4C
3 Whitehall Place
London
SW1A 3AW

18 October 2010

Our Ref: SHLNG-DECC-001

Dear Third Package Consultation Team,

RE: CORPORATE RESPONSE FORM 'THIRD PACKAGE' CONSULTATION URN 10D/727

South Hook LNG Terminal Company Ltd (SHLNG) welcomes the opportunity to respond to the above consultation.

We have kept ourselves briefed on developments in the Third Energy Package and have been diligently working to be in a position by 3rd March 2011 for SHLNG to comply with all the changes affecting our operation. In particular we expect to be able to comply with the transparency terms of the new Gas Regulation and have worked with the TSO, National Grid Gas, to agree part of those requirements. Our activities in this respect were well under way before DECC initiated its public proceedings on Third Energy Package Implementation (May 2010).

We were surprised to see DECC raise the question of whether LNG Operators should be licensed for the purposes of ensuring compliance; it is not altogether clear to us whether DECC is entirely neutral on whether to implement the requirements via a new licence regime or by amending existing legislation.

Our response focuses entirely on question six:

Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever possible?

SHLNG is subject to an Exemption Order under Section 19C of the Gas Act 1986, which contains rights for Ofgem to amend or withdraw the Exemption in a wide range of circumstances and which acts as a strong incentive for compliance with its terms.

In considering the options put forward by DECC, SHLNG has concluded that it has a clear preference for the EU requirements to be implemented using the route of amendments to existing primary legislation, rather than through a new licence regime.

The reasons we see that have led us to this preference include:

- The introduction of a new licence regime would in any case require legislation.

- A licence regime directionally increases regulatory risk and would have an adverse effect on long-term investment in LNG (and gas storage) infrastructure. Coupled with changes that are proposed to the collective licence modifications, it would be relatively easy for Ofgem to implement changes – this is an important consideration as it would allow Ofgem to more easily introduce rules above those required as a minimum by EU legislation, without the scrutiny associated with primary legislation, altering our currently positive view of the relative stability of regulatory arrangements in the UK.
- Much of the material that we assume would go into a licence already exists in legislation. DECC has not provided anything by way of what the licence terms might look like nor provided any analysis on the interactions/overlaps with the Exemption Order; furthermore, changes required by the Third Energy Package are relatively few (for LNG) in comparison so the creation of a licensing regime may require significant subtraction from the existing legislation (in particular the Gas Act 1986) to avoid duplication with licence terms. Finally, UK derived discretionary licence changes would provide a route to escape the closer scrutiny that is assured with primary legislation, and upon which SHLNG has been hitherto comfortable to rely.
- Licensing is not the only way to ensure that there is an appropriate means of enforcement for Ofgem. This can also be written into the legislation where considered necessary and as mentioned, the Exemption Order already provides Ofgem with significant powers to enforce change – it could for instance use the terms of the Exemption Order to help ensure compliance with the transparency obligations of the Gas Regulation.
- It was not entirely clear to us what the purpose to be served by designation is. Regardless, while DECC notes that designation of storage and LNG system operators (ref: Article 12 of Directive 2009/73/EC) would be considered 'part of the activity' of licensing storage and LNG operators, the designation requirements could also be implemented via primary legislation and fulfilled by listing these operations. Equally, is it not open to DECC to consider designation 'part of the activity' of granting the Exemption Orders to which LNG operators such as SHLNG are subject?

Should DECC, subsequent to this consultation, determine that there are arguments or justification to pursue a licensing route then we trust that DECC will extend the period of review on this aspect before final decision. A fully transparent review, covering at the same time what would/would not be covered in a licensed operation, rights and limits of appeal on licence modifications, and impacts on or changes required to the Exemption Order would all be important before a cost benefit assessment could be concluded.

We trust that our views will be taken into account but in the meantime please do not hesitate to contact us in the event that any clarification is required.

Yours faithfully,



Note: The postcode for our Milford Haven address has changed to SA73 3SU.